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Protect Rights of All Privy to U.S. Secrets

By Frank Snepp

LOS ANGELES — Now that the Reagan Administration has shelved, for the moment, its infamous censorship decree, Congress is considering ways to keep it on the shelf permanently. But none of the proposals offered so far would eliminate the discriminatory arrangement now in effect: Intelligence officers still have their writings screened and censored by the Government, while intelligence consumers in the State Department and elsewhere who are exposed to the same secrets would be allowed to slip the muzzle once they retire.

The censorship in question arises from a 1980 Supreme Court ruling against me that upheld the right of the Central Intelligence Agency to subject its employees to lifelong prepublication review and censorship of their writings. Last March, the Administration cited the ruling as justification for extending these strictures to 120,000 Federal employees outside the C.I.A. who have security clearances.

The Administration's recent retreat spares those 120,000 — at least until after the election. Nevertheless, numerous intelligence officials, inside and outside the C.I.A., remain muzzled under the "Snepp" decision.

Amazingly, some of our most distinguished First Amendment experts seem reconciled to this prospect. Floyd Abrams, who represented The New York Times in the Pentagon Papers case, has written: "It is one thing to say that C.I.A. agents such as Frank Snepp must abide by a contract of silence . . . It is quite another to say that the First Amendment could conceivably tolerate the sweeping new restrictions on freedom of expression of thousands of former Government officials not involved with the C.I.A."

You almost have to have been an intelligence officer to understand why Mr. Abrams and others of his persuasion are wrong. As outsiders, they seem to harbor an image of C.I.A.

officers wallowing in secrets yet less adept than other bureaucrats at keeping them. But the reality is just the opposite: Intelligence officers are far better trained in security procedures than other bureaucrats; job compartmentation is so rigid that few in the intelligence community have access to as many secrets as even a lowly clerk with the National Security Council or a State Department desk officer; and the most sensitive secrets, policy plans and directives are almost never shared with intelligence officers.

Adm. Bobby Inman, Deputy Director of Central Intelligence from 1981 to 1982, has suggested that the most egregious security breaches are committed by high-level appointees in the executive branch who are less versed in the lore of secrecy than are intelligence officers. My own experience bears this out. While the Government was preparing to sue me for publishing my unclassified C.I.A. memoirs, a former ambassador took scores of classified documents from the State Department and then, because of carelessness, they were stolen from him (the ambassador was forgiven; I was gagged for life).

The moral of all this is self-evident. Congress should assure all bureaucrats who are privy to secrets equal treatment under the First Amendment. C.I.A. employees, no less than State Department officers, should be free of censorship. Administration officials will object, of course, that this could lead to an outpouring of national security information. But if you're out to leak secrets, gag rules and the threat of censorship won't stop you (Philip Agee, a former C.I.A. agent, kept on disclosing C.I.A. agents' names even as I was being clobbered in court). Moreover, there is already a plethora of laws that criminalize the disclosure of intelligence agents' identities and our most critical technological secrets.

If Congress ignores logic and accepts the idea of selective censorship, it ought at least to institute safeguards to protect intelligence officers' First Amendment rights. Congress should establish an independent review board to keep the C.I.A. and other intelligence agencies from overcensoring; clarify how, and under what circumstances, a censored author can challenge excisions in court; and set a time limit on post-employment censorship (five year old "secrets" are generally too stale to be sensitive). And since the Administration claims the right to "reclassify," hence censor, unclassified material, Congress should carefully define what can and cannot be struck from a manuscript, and what must be "cleared" in the first place.

To do any less would be an Orwellian compromise, leaving some public servants far less equal than others. Worse, it would establish a dangerous precedent. Once you begin slicing First Amendment rights too thin, neither the press nor the private citizen is safe.

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